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SIGNS HAWAII and SIGN ART

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL ARBSLAND,

Plaintiff,

v.

SOUTHWEST SIGNS, THE HOME
DEPOT, INC.; AND DOES 1-100,

Defendants.

SOUTHWEST SIGNS, LLC,

Cross-Complainant,

v.

THE HOME DEPOT, SIGNS HAWAII,
SIGN ART, L. MORIGUCHI, INC.,
AND DOES 1 through 50, inclusive,

Cross-Defendants.

Case No. C06-04191 PVT

**STIPULATION TO CONTINUE DATE
ON WHICH SIGNS HAWAII MAY
FILE RESPONSIVE PLEADING TO
CROSS-COMPLAINT OF
SOUTHWEST SIGNS, LLC;
[PROPOSED] ORDER THEREON**

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Pursuant to Local Rule 6-1, IT IS HEREBY STIPULATED by and between defendant and cross-plaintiff Southwest Signs, LLC ("Southwest") and cross-defendant Signs Hawaii that cross-defendants shall have an additional thirty (30) days, i.e., until June 4, 2007, to file any responsive pleading to the cross-complaint filed by Southwest Signs. Good cause exists for this continuance as follows:

1. Signs Hawaii plans to file a motion to dismiss the cross-complaint on the grounds the two-year statute of limitations for personal injury has run for Mr. Arbsland in addition to filing a motion to transfer venue because the accident occurred in Hawaii.

2. Mr. Arbsland, in his complaint, alleges as follows:

"[He] rendered mentally incompetent and incapacitated by reason of a traumatic brain injury. He remained in this state of mental incompetence and incapacity due to injuries he suffered as a result of the wrongful acts of the defendants and the medications he was required to take as a result of his injuries. Consequently, the period of this mental incompetence and incapacity is not part of the time limited for the commencement of this action. Plaintiff is informed and believes and thereon alleges that the recovery from mental incompetence and incapacity did not occur for a period of at least ten months and arose at such a time that the filing of this action is timely and within the relevant state [sic] of limitations."

3. The foregoing contention (in addition to his claims of physical injury) casts into the scope of this controversy plaintiff's medical records and related material prepared by the workers' compensation division of the Hawaii Department of Labor and Industrial Relations ("Department of Labor"). Despite Arbsland's allegation of incapacity, it would appear he had sufficient mental capacity and competency to pursue a workers' compensation proceeding. Thus, Mr. Arbsland, by filing the workers' compensation action, has cast into controversy (besides his physical injuries) his ability to comprehend the fact he was injured and that he needed to file a legal action to protect his rights.

1 4. Notwithstanding the good faith of Signs Hawaii and its numerous attempts
2 to contact plaintiff's counsel, Signs Hawaii was unable to obtain Mr. Arbsland's consent
3 to obtain his authorization to release records from the Department of Labor and Hawaii
4 Employers Mutual Insurance Company ("HEMIC"), Arbsland's workers' compensation
5 carrier.

6 5. Based upon the foregoing circumstances, Signs Hawaii believed it was
7 necessary to obtain information by serving subpoenas for records in the possession of the
8 Department of Labor and HEMIC. These subpoenas were served with sufficient time for
9 all interested parties to react, the Department and HEMIC to produce the documents,
10 Signs Hawaii to analyze the responses, and finally, for Signs Hawaii to file a motion to
11 dismiss and a motion for change of venue.

12 6. Simultaneously, the Department of Labor and HEMIC have required a
13 Mr. Arbsland to sign an authorization out of concern that their production of the records
14 without such a consent would violate the pronouncements of a recent decision of the
15 Supreme Court of Hawaii, captioned *Brende v. Hara*, 2006 Haw. LEXIS 616 (November
16 2006).

17 7. Respectful of the concern demonstrated by HEMIC and the Department
18 of Labor of each of their intent to follow *Brende*, counsel for Signs Hawaii has worked
19 diligently to fashion a protective order in accordance with the ruling of *Brende* in order
20 to obtain the agreement of HEMIC and the Department of Labor to produce documents
21 pursuant to a protective order. Further, counsel has worked to obtain the consent of both
22 of those entities to have this District issue the requisite order and to agree to abide with
23 such an order.

24 8. On January 31, i.e., 2 days before the responsive pleading was due
25 (before obtaining this stipulation), the Department of Labor agreed to produce its
26 documents subject to a protective order from this court.

27 9. On February 2, i.e., the day the responsive pleading was due (before
28 obtaining the stipulation), HEMIC similarly agreed to produce its documents subject to

1 a protective order from this court. In sum, Signs Hawaii diligently attempted to respond
2 to Southwest Signs' cross-complaint (and plaintiff Arbsland's complaint) but has been
3 unable to do so.

4 10. On February 2, 2002, Signs Hawaii filed a Notice of Motion and Motion to
5 Compel HEMIC and the Department of Labor to produce their files in response to a
6 subpoena from this court. On March 19, 2007, the Honorable Patricia V. Trumbull,
7 Magistrate Judge, denied the motion to compel production on the grounds that Signs
8 Hawaii's subpoenas were defective in that they sought to compel production in another
9 district.

10 11. Shortly thereafter, in another good faith attempt to have the records
11 produced to it in the most expedient way possible, Signs Hawaii renewed its request to
12 Mr. Arbsland's counsel that Mr. Arbsland sign an authorization to release the HEMIC
13 and Hawaii Department of Labor files. Signs Hawaii located an authorization form
14 acceptable to both HEMIC and the Department of Labor and submitted it to Mr.
15 Arbsland.

16 12. On March 26, 2007, counsel for Signs Hawaii received the signed
17 authorizations from Mr. Arbsland. That same day, counsel forwarded via facsimile and
18 e-mail the authorizations to both HEMIC and the Department of Labor. Thus, on the
19 same day Mr. Arbsland gave his authorization to release the pertinent records, HEMIC
20 and the Department of Labor received his authorization.

21 13. Neither HEMIC nor the Department of Labor have produced any records.
22 That is so notwithstanding Signs Hawaii has repeatedly contacted HEMIC and the
23 Department of Labor to inform them of the need to respond to its request as soon as
24 possible given the impending May 3, 2007 deadline to file a responsive pleading to
25 Southwest Signs' cross-complaint—which will be based entirely on records in HEMIC's
26 and the Department of Labor's possession.

27 14. Signs Hawaii has demonstrated ample good faith in attempting to obtain the
28 records. It has followed up with both HEMIC and the Department of Labor at least two

1 times each week. They have responded with courteous – yet thus far unsuccessful —
 2 – attempts to produce their records in a timely manner. That is so with respect to the
 3 Department of Labor, for example, because they are forced to copy voluminous records,
 4 i.e., at least 10 files, by hand.

5 15. With respect to when Signs Hawaii may expect to receive the records, the
 6 Department of Labor has informed Signs Hawaii it will be unable to provide any records
 7 until the week after next, i.e., the week of April 23 – *at the earliest*. HEMIC has thus
 8 far been unable to commit to a date on which they will produce their records.

9 16. Given Signs Hawaii will likely not receive any records until at least the last
 10 week of April – at the earliest – this plainly does not provide Signs Hawaii with
 11 sufficient time to analyze these voluminous records, much less file both the motion to
 12 dismiss and motion to transfer venue the following week, on May 3, 2007.

13 11. This stipulation will not affect a deadline will not "affect the date of an
 14 event or deadline already fixed by Court order", a case management conference set for
 15 May 4, 2007. A declaration pursuant to Local Rule 6-2 is thus unnecessary.

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1 Therefore, for good cause shown, Signs Hawaii shall have an additional thirty (30)
2 days, i.e., until June 4, 2007, to file a response to Southwest Signs' cross-complaint.
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4 IT IS SO STIPULATED.

5 DATED: April 13, 2007

ADLER LAW GROUP
ERWIN E. ADLER
ELIZABETH A. SULLIVAN

7 By: [Signature]
8 Elizabeth A. Sullivan
9 Attorneys for Cross-Defendant, Signs
Hawaii

10
11 DATED: April 17, 2007

CESARI, WERNER & MORIARTY
DENNIS F. MORIARTY
ANDREW S. WERNER
JOSE A. MONTALVO

14 By: [Signature]
15 Andrew S. Werner
16 Attorneys for Defendant and Cross-
17 Complainant, Southwest Signs, LLC

18 IT IS SO ORDERED.

19
20 DATED: 4/18/07

22 [Signature]
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24 Hon. D. Jeremy Fogel
25 Judge of the United States District Court
26 for the Northern District of California
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